

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DARIN WARD HOFFMAN,	:
Petitioner	:
v.	:
LOUIS S. FOLINO,	:
SUPERINTENDENT, S.C.I. GREENE	:
Respondent	:

Case No. 3:04-cv-217-KRG-KAP

Report and Recommendation

Recommendation

Petitioner, at S.C.I. Somerset serving a life sentence imposed on December 14, 1998, by the Court of Common Pleas of Somerset County, has filed a motion to vacate the judgment denying his petition for a writ of habeas corpus. docket no. 20. The motion should be denied.

Report

Petitioner filed a petition for a writ of habeas corpus in late 2004, this court denied the petition in early 2008, and the Court of Appeals for the Third Circuit denied a certificate of appealability later that same year. The Supreme Court denied review in 2009. Petitioner now asserts that he is entitled to relief under Fed.R.Civ.P. 60(b) because in its handling of the petition this court erred in its assessment of the facts and law. In other words, he is pursuing a second attempt at an appeal.

Because Rule 60(b) is neither a second opportunity to take a direct appeal, Morris v. Horn, 187 F.3d 333, 336 (3d Cir.1999), nor a second opportunity to litigate the merits of a habeas petition, Pridgen v. Shannon, 380 F.3d 721, 727-28 (3d

Cir.2004)(a Rule 60 motion attacking the underlying state court conviction must be treated as a second or successive petition under the Antiterrorism and Effective Death Penalty Act of 1996 and be authorized under 28 U.S.C. § 2244(b)), petitioner's motion must be denied. If petitioner has a basis for a second or successive petition he should file an application for leave to proceed with the Court of Appeals for the Third Circuit.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have ten days to serve and file written objections to this Report and Recommendation.

DATE: _____

2 July 2010

Keith A. Pesto

Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record and by U.S. Mail to:

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